$5.00 each. The present Appellant is one of these men. In addition to imposing the fines the Learned Magistrate ordered that the monies found on the persons of the accused should be confiscated, namely, this sum of $198.08.

This present Appellant appeals only against the order of the Magistrate confiscating the sum of $198.08.

It is quite evident that this present Appellant is not entitled to appeal against the confiscation of all that sum but only of whatever particular amount was taken from him personally.

I have decided therefore to deal with this case in revision.

The Learned Magistrate gives as his ground for confiscating this money as follows:—

> "I made an order for the confiscation of the property, i.e. the cash amounting to $198.08 under the wide powers given to me by Section 407 of the Criminal Procedure Code, Cap. 6. I consider that under those circumstances the money must have been used for the commission of the offence of gaming in a Common Gaming House".

It seems to me that this conclusion of the Learned Magistrate is not warranted by evidence. In my opinion, the evidence does not establish that whatever sums of money these accused had in their possession, in their pockets, must have been used for the commission of the offence of gaming. If anything, the inference appears to me to be at least as strong against that conclusion.

The Learned Deputy Public Prosecutor, while not supporting this order of the Magistrate, has asked me to make an order of forfeiture under Section 16 (ii) of the Common Gaming Houses Enactment. In the circumstances of the case, I am not prepared to do this.

The order of confiscation of the sum of $198.08 is set aside and this sum of money is to be refunded to the persons from whom it was taken by the Police.

Order set aside.

[APPELLATE CRIMINAL JURISDICTION]

POYSER, C.J.

May 27, 1940.

PUBLIC PROSECUTOR
v.
MOHAMED ARIFF BIN OMAR.

[SELANGOR MAGISTRATE'S CRIMINAL APPEAL No. 21 of 1940]

Evidence Enactment, Ss. 24, 29—confession—conditions of admissibility.

An employee of the Sanitary Board, Klang, was charged with criminal breach of trust in respect of money received by him for payment of land assessment and not paid over to the Sanitary Board. The Deputy Chairman of the Sanitary Board recorded in the presence of the accused a statement from the complainant and a witness, containing allegations against the accused. The official then recorded a statement from the accused. Counsel for the accused objected to the statement being tendered in evidence on the ground that it was not made voluntarily. The trial Magistrate acceded to counsel's contention and rejected the evidence.

Held, on appeal against acquittal, that the statement was not caused by any inducement or threat but was made voluntarily and that the trial Magistrate should have required further details from the Deputy Chairman in regard to the circumstances under which the statement was made, viz., what he had said to the accused (respondent) and whether in fact there had been any inducement or threat.

Case referred to:—

(1) *Queen v. Thompson,* (1893) 2 Q.B.D. 12.

MAGISTRATE'S CRIMINAL APPEAL.

Grattan-Bellew, Deputy Public Prosecutor, for Public Prosecutor (Appellant).

Rajasooriya for accused (Respondent).

Poyser, C.J.—This is an appeal by the Public Prosecutor. The respondent was charged with criminal breach of trust of the sum of $4.70, the property of the complainant Mu Eisah binti Haji Dul Hadi. The evidence was to the effect that the Respondent, a Sanitary Board employee, received this sum from the complainant for payment of land assessment, but did not pay it to the Sanitary Board.

The Magistrate found that the complainant's evidence was unreliable, and was not impressed with the other evidence. On this aspect of the case I entirely agree with the Magistrate, but the grounds of the Public Prosecutor's appeal are:—

> "The learned Magistrate was wrong in law in refusing to admit in evidence the confession made by the respondent to the fourth witness for the prosecution".

The evidence as to this alleged confession was that of the Deputy Chairman of the Sanitary Board. The following is the material part of such evidence:—

> "I am the Deputy Chairman, Sanitary Board, Klang. On 14.12.39 I received instructions from the Chairman, Sanitary Board, Klang, to investigate a complaint made by No. 1 and No. 2 witnesses. I proceeded to record a statement from Mu Eisah and No. 2 witness. The accused was present as the allegations had been made against him. The complaint was that the accused had taken money from Mu Eisah for payment of assessment and that the accused had not given a receipt. I then recorded a statement from the accused. The statement by the accused was given voluntarily in the presence of Mu Eisah and No. 2 witness".

At this stage Mr. Rajasooriya objected to the statement being tendered under section 24 of the Evidence Enactment, on the ground that the confession was not made voluntarily. The Magistrate agreed with Mr. Rajasooriya's contention, and rejected the confession. The following were his reasons:—

> "The evidence is clear that the accused was asked by the Deputy Chairman to make a statement. He had, therefore, no alternative but to make a statement. I therefore rejected the confession as it was not volunteered and cannot be said to have been voluntarily given, under section 24 of the Evidence Ordinance".

Section 24 of the Evidence Enactment is as follows:—

> "A confession made by an accused person is irrelevant in a criminal proceeding if the making of the confession appears to the Court to have been caused by any inducement, threat or promise having reference to the charge against the accused person, proceeding from a person in authority and sufficient in the opinion of the Court to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceeding against him".

I think the Magistrate was premature in rejecting this evidence—*prima facie* it was not caused by any inducement etc., but was made voluntarily. The Magistrate should, in my opinion, have required further details from the Deputy Chairman in regard to the circumstances under which the confession was made, *viz:* what he said to the respondent, and whether in fact there was any inducement, threat etc., for, in order that a confession may be admissible, it must be affirmatively proved that such confession was free and voluntary, that is, was not preceded by an inducement to the prisoner to make a statement held out by a person in authority, or that it was not made until after such inducement had clearly been removed—see *The Queen v. Thompson,*[1]. Further it must be remembered that a confession does not become irrelevant, because the prisoner was not bound to answer questions or warned that evidence of such confession might be given (section 29 of the Evidence Enactment).

Mr. Grattan Bellew, in view of the above, asked for a new trial before another magistrate. In view of the unsatisfactory nature of the complainant's evidence, I had considerable doubts whether I should accede to this request. As however the integrity of Government and Municipal servants is a matter of great public importance, and as in this case all the available evidence was not considered by the Magistrate, I think there should be a new trial. I would only add that although both in the lower Court and on appeal it was assumed that the appellant's statement was in fact a confession, it may well be that it was nothing of the sort, or it may be that although the evidence was to the effect that such confession was made voluntarily, further questioning may elicit that such was not the case.

The appeal is accordingly allowed, and a new trial directed before another magistrate.

Appeal allowed. New trial ordered.

[ORIGINAL CIVIL JURISDICTION]

HOWES, J.

May 27, 1940.

ISSAR SINGH son of BHOLA SINGH & ANOR.

v.

SAMUND SINGH son of MAYIAH.

[PERAK CIVIL SUIT No. 89 of 1939]

Probate and Administration Enactment (Cap. 8), S. 158—resealing of letters of administration—right of administrator to sue only after letters of administration resealed.

An administrator, who has been granted letters of administration in any part of the British Dominions, is not entitled to sue in the Federated Malay States on behalf of the estate of a deceased person before the letters of administration have been resealed.

TRIAL OF SUIT.

Sharma for plaintiffs.

Thivy for defendant.

In this case Howes, J. delivered an oral judgment.

Howes, J.—In this case I think the wording of Section 158 of the Probate and Administration Enactment is clear. In cases where Letters of Administration, which have been granted in the United Kingdom or any other part of the British Dominions, are brought to this Court for resealing, an Administrator acquires his rights only on the date when the Letters of Administration are resealed.

Section 158 states that (subject to certain conditions contained in Section 159) Letters of Administration may be sealed with the seal of that Court (i.e. the F.M.S. Court), "and thereupon shall be of the like force and effect, and have the same operation in the Federated Malay States as if granted by that Court".

It is clear to me that until the Penang Letters of Administration had been sealed by the seal of this Court, the Administrator had no rights whatever in the Federated Malay States.

In the present suit, the Plaintiff filed his plaint in the Federated Malay States on the 1st of May 1939 on the strength of his having obtained Letters of